Supreme Court, U.S.
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No. 95-953

IN THE

# Supreme Court of the United States

**October Term, 1995**

LIBERTY CABLE COMPANY, INC.,

*Petitioner,*

*against*

CITY OF NEW YORK, RALPH A. BALZANO, Commissioner of Department of Information Technology and Telecommunications, NEW YORK STATE COMMISSION ON CABLE TELEVISION, WILLIAM B. FINNERAN, GERARD D. DIMARCO, BARBARA T. ROCHMAN, DAVID F. WILBUR, and JOHN PASSIDOMO, UNITED STATES OF AMERICA, TIME WARNER CABLE OF NEW YORK CITY, and PARAGON CABLE MANHATTAN,

*Respondents.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

## BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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Dated: February 16, 1996
Albany, New York

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## BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

Liberty Cable Company, Inc. (Liberty), a provider of cable television service to apartment houses in New York City, seeks review of the denial of a preliminary injunction against an administrative "standstill" order that precluded Liberty from attaching new customers until it obtained a franchise. The Public Service Commission of the State of New York (Commission)[1] believes any grant of a writ of certiorari would be improvident because section 301(a)(2) of the Telecommunications Act of 1996 amends the definition of "cable system" in section 602(7) of the Communications Act (47 U.S.C. § 522(7)) to eliminate prospectively, as of February 8, 1996, any federal requirement that a franchise be obtained to serve an apartment house.

Further, the attached order frees Liberty from the restraints of the "standstill" order preventing extension of Liberty's service to new customers and provides that the proceeding against Liberty applies only to the period before February 8, 1996. Thus, the only issue between Liberty and the Commission is the lawfulness of Liberty's operations before February 8, 1996. This question, which at this point is undecided, does not justify issuance of a writ of certiorari. In addition, any request for injunctive relief against the Commission's pending administrative proceeding is not ripe for the reasons given by the Second Circuit and the District Court.

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[1]Pursuant to 1995 N.Y. Laws, Chapter 83, the Commission assumed the responsibilities of the New York State Commission on Cable Television as of January 1, 1996.

Respectfully submitted,

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Dated: February 16, 1996
Albany, New York

**ATTACHMENT**

**Order Vacating Standstill Order**

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on February 15, 1996

COMMISSIONER PRESENT:
Lisa Rosenblum

Case 90460- Petition of Time Warner Cable of New York City and Paragon Cable - Manhattan Regarding the Operations of Liberty Cable Company, Inc.

ORDER VACATING STANDSTILL ORDER

(Issued and Effective February 15, 1996)

This proceeding was commenced by the Commission on Cable Television by Order to Show Cause issued August 23, 1994 pursuant to Article 28 of the Executive Law. Subsequently, on December 9, 1994, the Commission on Cable Television entered an order ("Standstill Order) enjoining the respondent, Liberty Cable Company, Inc. (Liberty), from providing cable television service through any new interconnections by wire of multiple unit dwellings that were not commonly owned, controlled or managed.

This Standstill Order, although the subject of an action brought by Liberty Cable in U.S. District Court, remained in full force and effect on January 1, 1996, when, Article 28 of the Executive Law was repealed and the substance thereof transferred to Article 11 of the Public Service Law. The Public

Service Commission now has the statutory responsibility for administering statutory provisions formerly contained in Article 28 and is the successor-in-interest to the Commission on Cable Television in this proceeding.

On February 8, 1996, the President signed into law the Telecommunications Act of 1996. Section 301(a)(2) of the new law amends the definition of "cable system" in Section 602(7) of the Communications Act (47 U.S.C. §522(7)) in a manner that would now permit without a franchise the same operations which under the prior definition required a franchise and were the subject of the Standstill Order. The Standstill Order was based upon the prior definition of cable system in the Communications Act. The change in that definition appears to be effective immediately upon enactment of the Telecommunications Act. Therefore, the Standstill Order of December 9, 1994, the issues addressed by which are prospectively mooted by the Telecommunications Act of 1996, will be vacated with respect to all connections made after February 8, 1996.

The question of what remedies, if any, should be imposed for Liberty's alleged violations before February 8, 1996 remain pending before us and will be addressed and resolved in due course.

It is Ordered:

1. The order of the Commission on Cable Television, entered December 9, 1994, enjoining Liberty Cable from providing cable television service through any new interconnections by wire of multiple unit dwellings that were not commonly owned, controlled or managed is vacated with respect to all connections made after February 8, 1996.

2. This proceeding is continued.

s/Lisa Rosenblum
LISA ROSENBLUM
Commissioner